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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
YEMISI AKINYEMI,  
  
PLAINTIFF,  
  
-against- Case No.  
07 CV 4048  
  
MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF  
HOMELAND SECURITY,  
  
DEFENDANTS.  
-----X

DATE: October 4, 2007  
TIME: 10:04 a.m.

EXAMINATION BEFORE TRIAL of the  
Defendant, DEPARTMENT OF HOMELAND SECURITY,  
by a Witness, SUSAN MITCHELL, taken by the  
Plaintiff, pursuant to a Court Order, held  
at the law offices of K.C. Okoli, Esq., 330  
Seventh Avenue, 15th floor, New York, New  
York 10001, before Lieng Boua, a Registered  
Professional Reporter and Notary Public of  
the State of New York.

1 MITCHELL

2 A. The EEO program manager.

3 Q. Are you aware that Ms. Akinyemi  
4 filed a formal charge with the EEOC?

5 A. Yes, I am.

6 Q. Do you know that an investigative  
7 file was generated as a result of that charge?

8 A. I don't know. I've never seen  
9 one, but.

10 Q. As you sit here, you've never seen  
11 one?

12 A. An investigative file for EEOC,  
13 no, I never saw an investigative file.

14 Q. Did you see an investigative file  
15 generated by the U.S. Customs and Border  
16 Protection?

17 MR. CLOPPER: Objection,  
18 ambiguous. Are we speaking of  
19 Ms. Akinyemi or Ms. Haq?

20 MR. OKOLI: Ms. Akinyemi.

21 A. Again, I guess -- can I ask a  
22 clarifying question? Are we talking about the  
23 discipline file or the EEOC file?

24 Q. I'm talking, are you aware of any  
25 investigation that was conducted by the

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2 that found the weapon made a report of it to  
3 their supervisor?

4 A. I did find out about that.

5 Q. What did you find out is what I am  
6 asking? Did you then find out that the person  
7 who found the weapon actually reported it?

8 A. I found that they did not, for  
9 several months, report it.

10 Q. The people who found it did not  
11 report it for several months?

12 A. Correct.

13 Q. Did you learn when they then  
14 reported it?

15 A. Several months later.

16 Q. But how many months before  
17 Ms. Akinyemi's issue came up?

18 A. I don't know the exact time line  
19 but it was before Ms. Akinyemi's issue came up  
20 that they reported it to a supervisor.

21 Q. Did you find out from them why it  
22 took several months for them to report it at  
23 the time that they did?

24 A. I did find out.

25 Q. What did you find out?

1 MITCHELL

2 A. They decided to take care of it  
3 themselves.

4 Q. What are the names of these people  
5 who decided to take care of it themselves?

6 A. CBPO Wescott.

7 Q. Wescott, can you spell that?

8 A. W-e-s-c-o-t-t.

9 Q. Okay.

10 A. And there's another individual  
11 whose name is escaping me right now.

12 Q. Is that individual's name a  
13 female?

14 A. Male.

15 \_\_\_\_\_

16 Q. We will leave a space in the  
17 transcript so you can provide the name of that  
18 person.

19 MR. CLOPPER: She is answering  
20 that she does not know, but we will  
21 respond to it in an appropriate discovery  
22 request for that information.

23 MR. OKOLI: She said the name is  
24 escaping her.

25 Can you read back the answer?

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2 result of her investigation?

3 A. I was advised that the case was  
4 closed.

5 Q. Did you ask her why the case was  
6 closed?

7 A. No, I did not.

8 Q. Did she tell you?

9 A. I believe it was handled at her  
10 level, handled at the level below me.

11 Q. But the question is this: She did  
12 not take action of her own volition? You  
13 instructed her to take action to look into the  
14 matter?

15 A. To look into the matter, yes.

16 Q. And you didn't ask her whether or  
17 not the matter you asked her to look into was  
18 proven or not proven?

19 A. She told me it was taken care of,  
20 that it had been reviewed.

21 Q. Did you understand that it was not  
22 established or that it was established? What  
23 was your understanding?

24 A. My understanding was that an  
25 incident did occur and it was handled at a

1 MITCHELL

2 level lower than myself.

3 Q. Your understanding was that an  
4 incident occurred?

5 A. Correct.

6 Q. What did you understand occurred?  
7 What incident, quote-unquote, did you  
8 understand occurred?

9 A. I never got a copy of the case  
10 file because I was advised that any actions  
11 that needed to be taken were already handled  
12 below me.

13 Q. And the person who handled it  
14 below you is somebody you supervised; correct?

15 A. Yes.

16 Q. When you say it was handled, what  
17 specifically do you mean?

18 A. I was advised by my senior manager  
19 that it was handled.

20 Q. Okay. And did you get the sense  
21 of whether or not Ms. Gluba was disciplined  
22 for it or not?

23 A. I got the sense that there was  
24 discipline taken.

25 Q. What discipline did you learn was

1 MITCHELL

2 she told you she has no knowledge of  
3 Ms. Gluba's discipline.

4 MR. OKOLI: Okay.

5 MR. CLOPPER: There's documents  
6 that bear on this issue. I am not quite  
7 sure where we are going with this.

8 Q. Just to be clear, you asked  
9 Ms. Haage to look into the allegation that  
10 Ms. Gluba had revealed sensitive government  
11 information; correct?

12 A. Correct.

13 Q. And you never found out  
14 specifically from Ms. Haage what her  
15 conclusion was as a result of the  
16 investigation?

17 A. I didn't say that.

18 Q. Did you find out from Ms. Haage  
19 what she found as a result of her  
20 investigation?

21 A. Yes, I did.

22 Q. What did she tell you she found?

23 A. That sensitive information was not  
24 revealed to members of the traveling public.

25 Q. Did you say that some discipline

1 MITCHELL

2 her probation?

3 A. It would have to be case specific.  
4 Perhaps, perhaps not. It is dependent on the  
5 circumstances of the case.

6 Q. Thank you. Is Ms. Gluba still on  
7 probation?

8 A. No.

9 Q. By the way, what is Kathleen  
10 Haage's race?

11 A. She is white.

12 Q. Do you know Ms. Gluba's current  
13 title?

14 A. CBPO.

15 Q. Just to be clear, you did not  
16 become aware of the claim or allegation that  
17 Ms. Gluba had revealed sensitive information  
18 to the public until my client raised it in the  
19 course of the investigation of her claim.  
20 Correct?

21 A. Correct.

22 Q. Now, you said Ms. Haage did this  
23 investigation and told you it was handled at  
24 her level. Correct?

25 A. Correct.



1 MITCHELL

2 MR. OKOLI: Okay. Even though I  
3 will put it in writing, I want to have  
4 every memoranda relating to Ms. Haage's  
5 investigation of Ms. Gluba's situation or  
6 the investigation by anyone else at  
7 Customs relating to the allegation of  
8 Ms. Gluba revealing sensitive  
9 information.

10 Q. Do you know an employee by the  
11 name of Elba Mendez?

12 A. Not personally.

13 Q. Do you know of Elba Mendez?

14 A. Yes.

15 Q. How did you come to know of her?

16 A. Your client's allegations.

17 Q. And what did you learn were my  
18 client's allegations against Ms. Mendez?

19 A. I believe that Ms. Mendez had been  
20 involved in a similar situation.

21 Q. When you say "similar situation,"  
22 would you be more specific to the best that  
23 you recall?

24 A. I believe the allegation was that  
25 she also met family members arriving on a

1 MITCHELL

2 flight.

3 Q. At a gate area?

4 A. I don't know that that was part of  
5 the allegation.

6 Q. As a result of that allegation,  
7 did you take any steps?

8 A. I referred the allegations to the  
9 area director.

10 Q. And who would the area director be  
11 in that case?

12 A. Kathleen Haage.

13 Q. Do you recall when it was that you  
14 referred the allegation to the area director?

15 A. That day or the next day when  
16 Mr. Angevine gave me the list of allegations.  
17 It was the exact same time.

18 Q. When you referred this allegation  
19 to Ms. Haage, did you do that by memo or was  
20 it just verbal?

21 A. Verbal.

22 Q. Did you give her any documents in  
23 connection with the verbal instruction that  
24 you gave her?

25 A. No.

1 MITCHELL

2 in connection with investigating the  
3 underlining complaints or allegations by my  
4 client were done verbally?

5 A. Yes.

6 Q. Okay. So in relation to that of  
7 Mr. Murphy, it was also a verbal reference to  
8 Ms. Haage to investigate it?

9 A. Correct.

10 Q. And did Ms. Haage come back to you  
11 to tell you the results of the investigation?

12 A. No. I did not hear anything about  
13 it.

14 Q. How soon after you learned of the  
15 allegation did you make this reference to  
16 Ms. Haage to investigate Mr. Murphy's  
17 situation?

18 A. As I said before, all the  
19 allegations were made to me by Mr. Angevine at  
20 the same time and they were all referred to  
21 Ms. Haage at the same time.

22 Q. Where is Ms. Haage now?

23 A. Retired.

24 Q. So from the time that you referred  
25 these three allegations to Ms. Haage until her

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2 A. I don't know what people's  
3 perceptions are.

4 Q. Okay. Did you ever hear any  
5 rumors, not in the press, from the workplace?

6 A. So now is your question employees?

7 Q. Employees.

8 A. I have never heard employees say  
9 that we are profiling Nigerians or passengers  
10 on Nigerian planes.

11 Q. Now, I will ask a slightly  
12 different question. Since Ms. Akinyemi's  
13 case, have you learned, maybe third-hand or  
14 fourth-hand, learned that a customs employee  
15 thought that Nigerian passengers were being  
16 profiled?

17 A. I have never learned that a  
18 customs employee thought that Nigerian  
19 passengers were being profiled.

20 Q. Okay. If they were being  
21 profiled, would you see anything wrong with  
22 that?

23 A. We don't profile passengers at  
24 all.

25 Q. I am just asking. If they were,

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1  
2 would you find anything wrong with that?

3 A. Yes. I don't believe profiling is  
4 an effective law enforcement tool.

5 Q. As the director of field  
6 operations, are you aware of any policies in  
7 place regarding drug trafficking that are  
8 applied differently to Nigerians than they are  
9 applied to others?

10 A. I don't know of any policy that  
11 applies to one nationality versus another.

12 Q. So as you sit here today, you do  
13 not know whether Nigerians have ever been  
14 profiled by customs officers within your area  
15 of command based on the perception of  
16 trafficking and drugs?

17 A. I don't know of any of my  
18 employees that ever profiled anyone. I do  
19 believe that flights from Nigeria have been  
20 targeted, but it is the country as opposed to  
21 the people.

22 Q. What is the distinction between  
23 the country and the people?

24 A. We have a variety of countries of  
25 interest, whether for terrorism or for

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2 narcotics. Anyone coming from that country  
3 could be questioned for those reasons, not  
4 necessarily the people, the nationality.

5 It is the country where the flight  
6 is coming from, where the passenger is coming  
7 from, not where the passenger was born, that  
8 is of interest for a law enforcement  
9 perspective.

10 Q. When you say "the country where  
11 the flight is coming from," as a matter of  
12 common sense, would you expect more people on  
13 that flight be citizens of that country than  
14 non-citizens?

15 A. That would be the norm.

16 Q. So if you were targeting a flight  
17 coming from Nigeria, you would expect the  
18 majority of the people flying on that plane to  
19 be Nigerian citizens?

20 A. Correct, but they may not be the  
21 ones of interest to us. In fact, it may be  
22 the non-Nigerians that is of more interest to  
23 us from a law enforcement perspective.

24 Q. Do you have any documentation of  
25 the people that you have interdicted or

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2 challenged as persons of interest coming on  
3 flights from Nigeria? Do you have any such  
4 documents?

5 A. Every passenger coming through has  
6 to go through a clearance process, so I could  
7 tell you every passenger has been talked to  
8 and has been examined for CBP.

9 Q. That is not my question. When you  
10 talk about targeting, what does targeting mean  
11 to you? Explain that to us when you say  
12 certain countries, flights from certain  
13 countries are targeted. Explain that to us.  
14 What does that mean?

15 A. Certain countries might be --  
16 depending on the particular area of interest,  
17 certain flights coming from certain countries  
18 might have more interest and so I would expect  
19 that resources would be more dedicated to  
20 looking and determining the threat of those  
21 individual passengers in that flight.

22 Q. When you say certain flights  
23 coming from certain countries have more  
24 interest, what is that in plain speak?

25 A. It could be for terrorism. We

1 MITCHELL  
2 have a variety of flights that are of interest  
3 for that. For narcotics, we have flights of  
4 interest. For agriculture, we have flights of  
5 interest for those various items.

6 Q. Could you name the flights of  
7 interest in relation to narcotics that you are  
8 aware of since you became director of field  
9 operations?

10 MR. CLOPPER: Objection. I think  
11 we need to take a break. I need to --

12 MR. OKOLI: Not while a question  
13 is pending on the record and the fact  
14 that counsel is asking for a break --

15 MR. CLOPPER: Sure. I am  
16 concerned about a privilege issue here.

17 Do you think you can answer that  
18 question without violating a privilege,  
19 including law enforcement privilege?

20 THE WITNESS: That is law  
21 enforcement sensitive information.

22 MR. CLOPPER: I am with National  
23 Security. I am instructing my client not  
24 to answer.

25 Q. But you do admit that there are



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1  
2 flights coming from certain countries that  
3 Customs targets?

4 A. Correct, we do have targets.

5 Q. Okay. And some of the targets are  
6 based on the perception that those flights are  
7 likely to have drug traffickers?

8 A. I would not use the word  
9 "perception."

10 Q. In terms of drugs, what would  
11 cause you to have specific interest in flights  
12 coming from a certain country, whatever that  
13 country is?

14 A. It could be the region of the  
15 world that it is. It could be specific  
16 information. It could be general information  
17 in the intelligence community. It could be  
18 past history of successful interdiction.

19 There's a variety of reasons that together  
20 could form the basis for a risk assessment.

21 Q. So if a customs officer were to  
22 say that they targeted Nigerians because of  
23 their possible drug involvement, that would be  
24 incorrect?

25 A. I would think that it would be

MITCHELL

1  
2 incorrect to target Nigerians.

3 Q. No, no, no. I am --

4 A. That is the question you asked  
5 though.

6 Q. No. My question is -- let me  
7 rephrase my question. My question is, if a  
8 customs officer were to testify that they, at  
9 their location at the airport, targeted  
10 Nigerian passengers, you would say that that  
11 customs officer's testimony is incorrect?

12 A. In the context that you just said,  
13 yes, I would say that is incorrect.

14 Q. But you do not work at the  
15 airport; do you?

16 A. Not anymore. That is within my  
17 area of responsibility, but I am not assigned  
18 at the airport.

19 Q. So even as the director of field  
20 operations, if a customs officer who actually  
21 works at the airport were to say that they  
22 targeted Nigerians, Nigerian passengers, you  
23 would dispute that?

24 A. I would think that that was not a  
25 good law enforcement tool, and I don't think